

Revised Final Text of Proposed Regulations

In the following text, underlying indicates adopted or amended text; and strikethrough indicates deleted or relocated text.

3084.1. Right to Appeal

Subsections 3084.1(a) through (b) are unchanged.

Existing subsection 3084.1(c) is amended to read:

(c) The department shall ensure departmental appeal forms and forms prescribed by the Board of Parole Hearings ~~Prison Terms~~, the Narcotic Addict Evaluation Authority, ~~and~~ the Prison Industry Authority, and the Joint Venture Program for appeal of decisions, actions, or policies within their jurisdictions, are readily available to all inmates and parolees.

Subsections 3084.1(d) and (e) are unchanged.

NOTE: Authority cited: Section 5058, Penal Code. Reference Sections 148.6, 832.5, and 5054, Penal Code.

3084.7 Exceptions to the Regular Appeal Process

Subsections 3084.7(a) through (l) are unchanged.

New subsection 3084.7(m) is adopted to read:

(m) Joint Venture Program Employer Related Grievances.

(1) Any current or former Joint Venture Program inmate-employee who believes he/she has a grievance regarding a wage and hour or retaliation claim against a Joint Venture Employer shall submit the written grievance to the Joint Venture Program Chief.

(2) The Joint Venture Program Chief shall attempt to resolve all complaints.

(3) Time frames for filing grievances will be governed by the Division of Labor Standards Enforcement's (DLSE) statutes of limitations, including but not limited to Labor Code Section 98.7 and Code of Civil Procedure Sections 337, 338 and 339, for the appropriate type of complaint.

(4) If the inmate is dissatisfied with the Joint Venture Program Chief's decision, the inmate may file a complaint with the Labor Commissioner.

NOTE: Authority cited: Sections 5058 and 10006(b), Penal Code. Reference: Sections 832.5, 5054, and 10006(b), Penal Code; Section 19583.5, Government Code; *Wolff v. McDonnell* (1974) 418 U.S. 539, 558-560; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; ~~and~~ Section 35.107, Title 28, Code of Federal Regulations; Section 98.7, Labor Code and Sections 337, 338 and 339, Code of Civil Procedure.

Existing section 3480 is renumbered and relocated to section 3480.1.

New section 3480 is adopted to read:

3480. Joint Venture Program

The secretary shall establish Joint Venture Program operations in state prison facilities pursuant to the Prison Inmate Labor Initiative of 1990 (PILI). This program shall allow employers to employ inmates for the purpose of producing goods or services that may be sold to the public. The purpose of the program shall include preparing offenders for return to society by offering relevant job skills and work habits to increase success on parole, thereby benefiting society at large.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference Sections 2717.2 and 5058, Penal Code.

Section 3480.1 is relocated from existing section 3480, renumbered, and amended to read:

3480.1 3480. Joint Venture Policy Advisory Board.

The Joint Venture Policy Advisory Board, established in the department by Penal Code (PC) section 2717.4, shall serve to advise the ~~director~~ secretary of policies that further the purposes of the Prison Inmate Labor Initiative of 1990 (~~PILI~~). The board shall meet at the call of the chairperson. The secretary shall serve as the chairperson of the board.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.4 and 5054, Penal Code.

3481. Joint Venture Employer Selection Criteria.

Section 3481 is amended to read:

(a) A Joint Venture Employer (JVE) shall be selected on the basis of their ability to further the purpose of the PILI.

The ~~director~~ secretary shall consider the employer's ability to:

- (1) Provide inmates with the means to reimburse the state from earned wages for a portion of the cost of the inmate's room and board.
- (2) Provide inmates with the means of paying restitution and compensation to the victims of crime from wages earned.
- (3) Employ inmates in productive work and provide them with the opportunity to earn money while encouraging and maintaining safe prison operations.
- (4) Provide inmates with the means to support their families to the extent possible.
- (5) Teach inmates skills and work habits that ~~which~~ may be used upon their release from prison by patterning the operation after those operations outside of prison.

(6) Assist inmates in their rehabilitation.

(7) Assist with retaining or reclaiming jobs for California, supporting new or developing California industries, or creating jobs for a deficient labor market as determined in cooperation with the Employment Development Department.

(b) The ~~director~~ secretary shall consider whether the operation will have an adverse impact upon California's labor force.

(c) The ~~director~~ secretary shall consider the operation's effect on public safety, security of the institution, and applicable worker safety standards.

(d) The secretary shall consider the financial status and stability of the prospective Joint Venture Employer company prior to the execution of a contract with the Joint Venture Employer.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.2, 2717.5 and 5054, Penal Code; and Section 5, Article XIV of the State Constitution.

3482. Joint Venture Program Contracts.

Section 3482(a) is amended to read:

(a) In addition to state contract requirements, each JVP contract shall include, but not be limited to, the following:

(1) A detailed description of the Joint Venture Employer's program operation, including but not limited to, the Joint Venture Employer's type of business and products produced.

(2)(1) The conditions and requirements under which the Joint Venture Employer's non-inmate employees shall be admitted onto or excluded from departmental or departmentally leased property.

(3)(2) A provision for Joint Venture Employer non-inmate employee orientation training which shall regarding departmental security, inmate accountability, and discipline, and other subjects as deemed necessary. consist of those items necessary for employees to operate the industry within the institution in a consistent, secure and effective manner. Ongoing training shall be scheduled as directed by the institution head.

(4)(3) ~~The comparable wages of job classification as determined in cooperation with the Employment Development Department.~~ A requirement that inmate-employees shall be paid "comparable wages" as defined by PC section 2717.8. "Comparable wages" means that compensation of inmate-employees by the Joint Venture Employer shall be comparable to the wages paid by the Joint Venture Employer to non-inmate employees performing similar work for that employer. If the Joint Venture Employer does not employ such non-inmate employees in similar work, compensation shall be comparable to wages paid for work of a similar nature in the

locality in which the work is to be performed. These wages are subject to the deductions listed in Section 3485(h) and the mandatory savings listed in Section 3485(i).

~~(5)(4) Wages and training of inmate employees.~~ A provision that the department shall monitor the wage rates paid to inmate-employees for compliance with the comparable wage requirement of PC section 2717.8.

(6) Hours of inmate employment and work schedule.

(7) Minimum and maximum inmate workforce requirements.

~~(8)(5)~~ Contraband items.

~~(9)(6)~~ Work-site security.

~~(10)(7)~~ Communications.

~~(11)(8)~~ Utilities.

~~(12)(9)~~ Responsibilities of the Joint Venture Employer, specifically those regarding:

(A) ~~Program operation and liabilities.~~ Obligation to pay inmate-employees comparable wages as required by PC section 2717.8.

(B) ~~Company policies.~~ Compliance with all applicable record-keeping requirements set forth in the California Labor Code and applicable Industrial Welfare Commission Wage Orders.

(C) General Liability, Fire, Legal, and Automobile Liability Insurance. ~~of production equipment.~~

(D) Maintenance of production equipment.

(E) Providing production supplies, materials, and equipment.

(F) ~~Safety and other types of supplies and equipment for the inmate employee.~~ Adherence to applicable federal, state, and local health and safety laws and regulations.

(G) Inmate-employee benefits.

(H) Notification to inmate-employees of their rights under PC section 2717.8 and relevant Labor Code provisions.

(I) Compliance with the requirements of department's approved inmate appeal procedures as required by Title 15, California Code of Regulations (CCR) Section 3084.1 or relevant Labor Code provisions.

(J) A Security Bond, or equivalent security, posting requirement shall be included in the contract. The amount of the bond, or its equivalent, shall be not less than two months wages for the workforce contemplated by the Joint Venture Employer after six months of operation, and shall be determined on a case-by-case basis based on, but not limited to, the size of the inmate workforce and the size of space leased by the Joint Venture Employer. The bond, or its equivalent shall be retained by the department for the duration of the contract and may be used by the

department in the event a Joint Venture Employer fails to submit payroll or defaults on any of its obligations to the State. The department shall apply the bond first to pay past due wages to inmate-employees and thereafter, the bond shall be available to pay unpaid obligations to the State, including, but not limited to, rent, utilities, workers' compensation, and custody costs.

(K) A requirement that the Joint Venture Employer prepare and submit to the department for its review and approval:

1. Prior to commencing business, a detailed job description for each job to be performed at the facility;
2. At the time additional jobs are created, a detailed job description for each new job; and
3. Annually, an updated, detailed job description for all jobs at the Joint Venture Employer's operation. Duty statements shall include a description of tasks to be performed, machines used, and skills required for each job.

(L) A requirement that the Joint Venture Employer prepare and submit to the department for its review and approval:

1. Prior to initial start-up of the Joint Venture Employer's operation, a wage plan detailing the comparable wage rate for each position, taking into account seniority, tenure, training, technical nature of the work being performed, or other factors; and
2. Annually, the Joint Venture Employer's current wage plan.

(M) Hiring of eligible inmate-employees, which is a decision within the sole determination of the Joint Venture Employer.

(N) Inmate-employee time keeping.

(O) Workers' Compensation Rate.

(P) Agreement that the Joint Venture Employer's business will not result in the displacement of any non-inmate workers performing the same work.

(Q) The process used by JVE for final selection of inmate-employees.

(R) Sole responsibility of Joint Venture Employer to comply with all applicable federal, state, and local laws and regulations.

(S) Inmate-employee performance evaluations.

(T) Requirement to post notices of employee rights.

(U) Provision of all applicable inmate-employee payroll data.

(13)(10) Responsibilities of the department/facility, specifically those regarding:

- (A) Designation of a Coordinator by the facility. ~~–Coordination and evaluation of the operation.~~
- (B) Lockdowns, fog lines and other circumstances under which inmate-employees may be restricted from work.
- (C) Right of entry and searches of the area leased by the Joint Venture Employer. ~~Searches of the production areas.~~
- (D) Inmate-employee discipline.
- (E) Program evaluation.
- (F) Initial screening of potential inmate-employee pool for security purposes.
- ~~(11) Responsibilities of both the JVE and department regarding:~~
 - ~~(A) Maintenance of buildings and grounds~~
 - ~~(B) Application screening of inmate employees.~~
 - ~~(C) Inmate employee discipline.~~
 - ~~(D) Inmate employee timekeeping.~~
 - ~~(E) Job Descriptions.~~
 - ~~(F) Inmate employee hiring process.~~
 - ~~(G) Inmate employee performance evaluations.~~

Subsection 3482(b) is amended to read:

(b) No Joint Venture Program contract shall be executed by the department ~~that~~ which will initiate employment by inmates in the same job classification as non-inmate employees of the same employer who are on strike or subject to lockout as defined in PC section 2717.6. ~~section 3000.~~

Subsections 3482(c) and (d) are adopted to read:

(c) The Joint Venture Employer and any and all agents and employees of the Joint Venture Employer shall act in an independent capacity and not as officers or employees of the State. “Joint Venture Program” is merely the colloquial name of the program, and does not create or connote a “joint venture” or partnership relationship between the parties as a matter of law. Nothing in this program shall be construed as constituting the parties herein as partners or joint venturers as those terms are defined under California law or any other law.

(d) Nothing in these regulations is intended to establish an employer/employee relationship between any inmate participating in the Joint Venture Program and the State of California, the department, or any individual agency or office of the State of California.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.5, 2717.6, 2717.8, and 5054, Penal Code; and Section 5, Article XIV of the State Constitution.

Existing section 3483 text is relocated and renumbered to new section 3485.

New section 3483 is adopted to read.

3483. Inmate Joint Venture Program Participation Joint Venture Lease

(a) The State of California, acting through the Department of General Services, with the approval of the department, shall enter into a lease with all Joint Venture Employer businesses.

(b) In addition to state leasing requirements, each Joint Venture Program lease shall include, but not be limited to, the following:

- (1) Description of the leased space.
- (2) Lease terms.
- (3) Rent to be paid to Department of General Services.
- (4) Utility rates.
- (5) Maintenance of leased space.
- (6) Prohibited/contraband items.
- (7) Environmental Compliance.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.2 and 5054, Penal Code.

New section 3484 is adopted to read:

3484. Monitoring Comparable Wages and Wage Plans

(a) The department shall monitor the wage rates and wage plans submitted by the Joint Venture Employer for compliance with PC section 2717.8.

(b) The department will obtain wage data, including wage range information, for each inmate-employee job description from the Employment Development Department, annually.

NOTE: Authority cited: 2717.3 and 5058, Penal Code. Reference: Sections 2717.3, 2717.4, 2717.8 and 5054, Penal Code.

Section 3485 is relocated from existing section 3483, renumbered and amended to read:

3485. 3483. Inmate Joint Venture Program Participation.

(a) Inmate employment is “at will” and as such is at the discretion of the employer. The Joint Venture Employer may lawfully terminate inmate-employees at any time with or without cause but not for unlawful reasons. The department may remove inmate-employees from participation in the Joint Venture Program at any time with or without cause.

(b) As a condition of employment, all inmate-employees agree to participate in random urine testing.

(c) Earned wages paid by the Joint Venture Employer will be distributed to inmates by the department once a month, regardless of the frequency the employer issues payroll.

(d)(e) Inmate participation in the Joint Venture Program shall be voluntary as evidenced by their written consent on the department's CDCR Form 1872, (Rev. 9/05) Inmate Participation Agreement – Joint Venture Program (JVP). The Joint Venture Employer shall provide to all inmates hired written information on the conditions of their participation in the Joint Venture Program. ~~Inmates shall be provided written information on the conditions of their participation in the JVP.~~ Such information shall include, but not be limited to:

(1) Hours of work and ~~the requirement that comparable wages be paid.~~

(2) Job description.

(3) ~~Credit earning status.~~ Right to file complaints regarding claimed violations of their rights under PC section 2717.8, relevant provisions of the Labor Code, and applicable Industrial Welfare Commission Wage Orders.

(4) ~~Withholdings which shall be deducted from the inmate's wages.~~ Inmates shall not be subject to retaliation, as specified in Title 15, CCR, Section 3084.1(d), by the department for their use of the inmate appeal process, to address Joint Venture Employer-related matters. Neither the Joint Venture Employer nor the department shall retaliate against inmates for exercising rights guaranteed under the State Labor Code or elsewhere in law to address Joint Venture Employer-related matters.

(e) The Joint Venture Employer shall post at the worksite and provide to each inmate-employee a notice of applicable employment laws and relevant Labor Code provisions.

(f)(b) The total daily hours worked by inmate-employees in the same job classification as non-inmate employees of the same Joint Venture Employer who are on strike or subject to lockout shall not exceed, for the duration of the strike, the average daily hours worked for the preceding six months, or if the Joint Venture Program has been in operation for less than six months, for the period of the operations. If the ~~director~~ secretary determines upon receipt of written notification by the union representing the non-inmate employees on strike or subject to lockout that such a condition exists, the limitation on inmate-employee work hours shall be implemented within 48 hours.

(g)(e) A separate inmate waiting list shall, if necessary, be maintained for each Joint Venture Program operation.

(1) An inmate's inclusion on any waiting list for a Joint Venture Program operation shall not affect their status on any other waiting lists maintained by the facility until such time as the inmate is employed by the Joint Venture Employer.

(2) If the inmate refuses to work, quits, or is removed from the Joint Venture Program, they shall be immediately returned to their housing unit, temporarily unassigned, and referred to a classification committee for placement either on a facility waiting list or, if they refuse to work, in a non-credit earning group pursuant to Title 15, CCR, Section 3375.

~~(h)(d)~~ Wages earned by each inmate participating in a Joint Venture Program operation shall be subject to the following deductions, which shall not exceed 80 percent % of the inmate's gross wages:

(1) Federal, state, and local taxes.

(2) Twenty percent ~~20%~~ of the inmate's net wages after taxes shall be for any lawful restitution fine or contributions to any fund established by law to compensate the victims of crime. ~~The sum shall not exceed 20% nor be less than 5% of gross wages.~~

(3) Twenty percent ~~20%~~ of the inmate's net wages after taxes shall be for costs of room and board which shall be remitted to the department facility's account.

(4) ~~Up to a maximum of~~ Twenty percent ~~20%~~ of the inmate's net wages after taxes for allocations for support of family pursuant to state statute, court order, or agreement of the inmate. ~~That portion or all of the 20% which that is not applied to support of family shall be retained for the inmate in mandatory savings. If the inmate chooses not to send money to a family member, and there is no court-ordered withholding, these funds will be deposited in mandatory savings.~~

~~(i)(e)~~ In addition to ~~(h)(d)~~ of 3485, 20 twenty percent % of the inmate's net wages after taxes shall be retained for the inmate in mandatory savings under the control of the department.

(1) Funds retained for an inmate's mandatory savings shall be deposited in an interest bearing account.

(2) Inmate-employees who terminate from Joint Venture Program with a savings account balance of \$300 or less may voluntarily elect to close their account and have the balance forwarded to their institutional trust account in order to avoid account fees.

~~(3)(2)~~ Each inmate's savings, plus the interest accrued by their savings, shall be provided to the inmate upon their release. ~~Wardens~~ Institution heads may authorize an earlier withdrawal of a portion of an inmate's savings in cases where the inmate is sentenced to 15 years or more and the inmate has accrued \$6500 or more in their account.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.8 and 5054, Penal Code.